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DIGEST OF RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

LYNCH *v.* COMMONWEALTH.

Nov. 17, 1921.

[109 S. E. 418.]

1. Intoxicating Liquors (§ 146 (1)*)—Ability to Complete Sale Unnecessary to Convict for Offering.—The ability, at the time of an offer to sell ardent spirits, to complete the sale in accordance with the offer, is not an essential element of the offense of offering ardent spirits for sale under Prohibition Act 1918, § 3.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 1, et seq.]

2. Intoxicating Liquors (§ 146 (1)*)—Offer to Sell Must Not Be Joke.—To constitute the offense of offering ardent spirits for sale, under Prohibition Act 1918, § 3, the offer must be, at least apparently, an actual offer to sell such spirits, and not a joke.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 1, et seq.]

3. Intoxicating Liquors (§ 238 (5)*)—Offer to Sell 50 Gallons of Whisky Not Impossible of Performance as Matter of Law.—An offer to sell 50 gallons of whisky cannot be said, as a matter of law, to be an offer to do something so utterly impossible of performance that it cannot reasonably be taken seriously and relied on as an actual offer, in violation of Prohibition Act 1918, § 3.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 1, et seq.]

4. Intoxicating Liquors (§ 236 (11)*)—Evidence Held to Sustain Conviction for Offering to Sell Ardent Spirits.—In a prosecution for offering ardent spirits for sale, in violation of Prohibition Act of 1918, § 3, evidence held to warrant a finding that the offer in question was an actual offer, and was not intended as a joke.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 1, et seq.]

5. Intoxicating Liquors (§ 146 (1)*)—Mere "Offer" to Sell Ardent Spirits an Offense.—A mere verbal offer to sell whisky is an offense, under Prohibition Act 1918, § 3; the word "offer" in such statute not having the meaning of "attempt."

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Offer. For other cases, see 8 Va.-W. Va. Enc. Dig. 1, et seq.]

Error to Corporation Court of Radford.

Zeigler Lynch was convicted of offering ardent spirits for sale, and brings error. Affirmed.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Harless & Calhoun, of Christiansburg, for plaintiff in error.

John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and Leon M. Bazile, Second Asst. Atty. Gen., for the Commonwealth.

MULLINS *v.* SUTHERLAND et al.

Nov. 17, 1921.

[109 S. E. 420.]

1. Sales (§ 383*)—Evidence Held Insufficient to Sustain Finding of Application by Buyer of Staves on Improper Contract.—In an action in conversion by sellers against buyer, by reason of an alleged application by the buyer of staves on a contract not existing at the time of the contract of sale in violation of such contract, evidence held insufficient to sustain a finding that the staves were not applied on a then existing contract.

2. Evidence (§ 568 (1)*)—Opinion Evidence Not Proper.—In action by sellers for conversion by the buyer in shipping goods on later contracts of the buyer, contrary to the contract between plaintiffs and defendant, testimony of one of the sellers that they loaded the goods for the purpose of shipping "under this contract" and that "they were not shipped under the contract," but stating no reason for that conclusion, was insufficient to show conversion, as it was incumbent upon the sellers to show the facts and not the mere opinion of the witness.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 248-250.]

3. Sales (§ 477 (1)*)—Seller May Waive Provision of Contract.—A seller could waive a provision in a conditional contract of sale under seal providing that the staves could be applied by defendant buyer only on existing contracts, and permit sales by buyer to other persons.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 248-250.]

4. Sales (§ 477 (1)*)—Provision for Resale Only to Certain Parties Held Waived.—A provision in a contract of sale of staves that resale by buyer could be made only to parties under existing contracts, seller retaining title for purpose of additional security for the purchase price until paid for, was waived, where the purchaser applied shipments of staves on contracts not existing at the time of the contract of sale, and no objection was made that there was a violation of the contract.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 248-250.]

5. Sales (§ 477 (2)*)—Application of Purchase of Staves on Improper Contracts Held Not Conversion.—Where provision in a contract for the sale of staves that they could only be applied by purchaser on then existing contracts was waived and the actual possession and right to the staves passed to buyer, and after such waiver he ap-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.